

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE ENROLLED ACT No. 81

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 10-1-9-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 17. A laboratory conducting forensic DNA analysis in Indiana may disclose or allow access to collected DNA samples and DNA analysis results only under the following circumstances:

- (1) To criminal justice agencies for law enforcement identification purposes.
- (2) To defense counsel for criminal defense purposes.
- (3) Upon authorization by a court or statute.
- (4) For a population statistics data base, identification research and protocol development, or quality control purposes, but only if personal identifying information is removed.
- (5) For purposes of postconviction DNA testing and analysis under IC 35-38-7.**

SECTION 2. IC 35-38-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 7. Postconviction DNA Testing and Analysis

Sec. 1. This chapter applies only to an offense that is any of the following:

- (1) Murder.**
- (2) A Class A felony.**

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(3) A Class B felony.

(4) A Class C felony.

Sec. 2. As used in this chapter, "DNA" refers to deoxyribonucleic acid.

Sec. 3. As used in this chapter, "offense" means to a felony to which a petition under this chapter relates.

Sec. 4. As used in this chapter, "victim" means an individual who would be entitled under IC 35-40-5-8 to receive information about a release of the petitioner.

Sec. 5. A person who was convicted of and sentenced for an offense may file a written petition with the court that sentenced the petitioner for the offense to require the forensic DNA testing and analysis of any evidence that:

(1) is:

- (A) in the possession or control of a court or the state; or
- (B) otherwise contained in the Indiana DNA data base established under IC 10-1-9;

(2) is related to the investigation or prosecution that resulted in the person's conviction; and

(3) may contain biological evidence.

Sec. 6. A petitioner must give notice of the petition to the prosecuting attorney for the county where the offense was allegedly committed.

Sec. 7. The court shall give the prosecuting attorney an opportunity to respond to the petition. The court may, in its discretion, order a hearing on the petition.

Sec. 8. After complying with section 7 of this chapter, the court shall determine whether the petitioner has presented prima facie proof of the following:

(1) That the evidence sought to be tested is material to identifying the petitioner as:

- (A) the perpetrator of; or
- (B) an accomplice to;

the offense that resulted in the petitioner's conviction.

(2) That a sample of the evidence that the petitioner seeks to subject to DNA testing and analysis is in the possession or control of either:

- (A) the state or a court; or
- (B) another person, and, if this clause applies, that a sufficient chain of custody for the evidence exists to suggest that the evidence has not been substituted, tampered with, replaced, contaminated, or degraded in any material

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(3) The evidence sought to be tested:

(A) was not previously tested; or

(B) was tested, but the requested DNA testing and analysis will:

(i) provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice; or

(ii) have a reasonable probability of contradicting prior test results.

(4) A reasonable probability exists that the petitioner would not have:

(A) been:

(i) prosecuted for; or

(ii) convicted of;

the offense; or

(B) received as severe a sentence for the offense;

if exculpatory results had been obtained through the requested DNA testing and analysis.

Sec. 9. If the court makes the findings described in section 8(1), 8(2), 8(3), and 8(4) of this chapter, the court shall order DNA testing and analysis of the evidence.

Sec. 10. If the court orders DNA testing and analysis under section 9 of this chapter, the court shall order the method and responsibility for the payment of any costs associated with the DNA testing and analysis.

Sec. 11. The court may appoint defense counsel for the person who was convicted of the offense at any time during any proceedings under this chapter if the person is indigent.

Sec. 12. If the court orders DNA testing and analysis under this chapter, the court shall select a laboratory that meets the quality assurance and proficiency testing standards applicable to laboratories conducting forensic DNA analysis under IC 10-1-9.

Sec. 13. (a) If a prosecuting attorney or defense counsel has previously subjected relevant evidence to DNA testing and analysis, the court may order the prosecuting attorney or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing and analysis, including underlying data and laboratory notes.

(b) If the court orders DNA testing and analysis under this chapter, the court:

(1) shall order the production of any laboratory reports that

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are prepared in connection with the testing and analysis; and
 (2) may order the production of any underlying data and laboratory notes.

Sec. 14. If a petition for DNA testing and analysis is filed under this chapter:

- (1) the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing and analysis;
- (2) the state shall:
 - (A) prepare an inventory of the evidence in the possession or control of the state that could be subjected to DNA testing and analysis; and
 - (B) submit a copy of the inventory to defense counsel and the court; and
- (3) if evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions.

Sec. 15. (a) The court may make any other orders under this chapter that the court considers appropriate, including designating any of the following:

- (1) The type of DNA testing and analysis to be used.
- (2) That the DNA testing and analysis satisfies the pertinent evidentiary rules concerning the admission of scientific evidence or testimony in the Indiana Rules of Evidence.
- (3) The procedures to be followed during the DNA testing and analysis.
- (4) The preservation of some of the sample for replicating the DNA testing and analysis.
- (5) Elimination samples from third parties.

(b) Elimination samples from a third party shall be required only if:

- (1) the petitioner has been excluded as the perpetrator or accomplice by DNA testing and analysis; or
- (2) extraordinary circumstances are shown to require the DNA test and analysis.

If the court orders elimination samples from a third party, the court shall offer the third party the choice to provide a sample that can be obtained through the least intrusive method possible.

Sec. 16. (a) The prosecuting attorney may provide notification under the procedures of IC 35-40-12 when:

- (1) the petitioner first files a petition for DNA testing and analysis under this chapter; and

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(2) the prosecuting attorney knows the name and address of the victim.

If the court grants a petition for DNA testing and analysis, the prosecuting attorney shall provide notification if the name and address of the victim are known. A victim shall be notified of the results of the DNA testing and analysis.

(b) The name and address of a victim are confidential for purposes of this chapter.

(c) Notification of third parties regarding a court order to provide elimination samples shall be through the prosecuting attorney.

(d) If a petitioner is exonerated by DNA testing and analysis, the victim shall be notified before the petitioner's release.

Sec. 17. Regardless of whether a petition has been filed under this chapter, if:

(1) a prosecuting attorney decides to order forensic DNA testing or analysis that was not previously performed on biological evidence that is related to the investigation or prosecution that resulted in a person's conviction; and

(2) the testing will consume the remaining biological evidence; the prosecuting attorney must notify the person of the proposed DNA testing and analysis.

Sec. 18. If the results of the postconviction DNA testing and analysis are not favorable to the person who was convicted of the offense, the court:

(1) shall dismiss the person's petition; and

(2) may make any further orders that the court determines to be appropriate, including any of the following:

(A) An order providing for notification of the parole board or a probation department.

(B) An order requesting that the petitioner's sample be added to the Indiana data base established under IC 10-1-9.

Sec. 19. Notwithstanding any law that would bar a trial as untimely, if the results of postconviction DNA testing and analysis are favorable to the person who was convicted of the offense, the court shall order any of the following:

(1) Upon motion of the prosecuting attorney and good cause shown, order retesting of the identified biological material and stay the petitioner's motion for a new trial pending the results of the DNA retesting.

(2) Upon joint petition of the prosecuting attorney and the

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petitioner, order the release of the person.

(3) Order a new trial or any other relief as may be appropriate under Indiana law or court rule.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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